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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 In re MARK L. DUBOIS; DONNA D.
11 DUBOIS,

12 Debtors.

13 TED SPICE

14 Appellant,

15 v.

16 MARK L. DUBOIS, et. al.,

17 Appellees.

CASE NO. 21-0384 RJB

BAP NO. 21-1037

Bk. No. 13-46104 BDL

ORDER ON MOTION FOR
RECONSIDERATION ON ORDER
EXTENDING TIME

18 This matter comes before the Court on the Appellant Ted Spice's Motion for
19 Reconsideration of the Order on an Extension to File Opening Brief. Dkt. 34. The Court has
20 considered the pleadings filed regarding the motion and the remaining record.

21 This case, brought by Ted Spice, is an appeal of the Chapter 7 Bankruptcy Trustee Brian
22 L. Budsberg's successful objection to Mr. Spice's proof of claim in the bankruptcy of Mark
23 Dubois and Donna Dubois. Dkt. 1. On January 14, 2021 the Bankruptcy Court held that all
24 claims in Mr. Spice's Proof of Claim No. 7 were precluded by a Pierce County, Washington

1 Superior Court judgment, sustained the Trustee’s objection, and disallowed the claim. Dkt. 1-1,
2 at 11-12. Mr. Spice timely filed a motion for reconsideration of the disallowance order, which
3 the Bankruptcy Court denied on February 5, 2021. Dkt. 1-1, at 6-9. On February 23, 2021, he
4 appealed the order denying reconsideration to the Bankruptcy Appellate Panel (“BAP”). Dkt. 1-
5 1, at 1-4.

6 On March 17, 2021, the Trustee elected, pursuant to 11 U.S.C. § 158(c)(1)(B), to transfer
7 this matter from the BAP to be heard in this court. Dkt. 1. The day before, on March 16, 2021,
8 Mr. Spice filed his Motion to Permit Extension of Appeal Deadline (Dkt. 1-2) and Motion to
9 Dismiss (Dkt. 1-3) in BAP, both of which were transferred for decision to this Court.

10 Mr. Spice later filed another motion to permit extension of appeal deadline in the
11 bankruptcy court and that court granted the motion on April 1, 2021. Dkt. 7. Mr. Spice’s Motion
12 to Permit Extension of Appeal Deadline (Dkt. 1-2) was denied as moot and his Motion to
13 Dismiss (Dkt. 1-3) was denied. Dkt. 29.

14 On April 30, 2021, Mr. Spice’s motion for the undersigned to recuse from the case was
15 denied (Dkt. 19) and that order was affirmed by the chief judge in this district, Chief Judge
16 Martinez (Dkt. 20). Mr. Spice filed a Notice of Appeal of those orders on May 28, 2021. Dkt.
17 24. Although Mr. Spice is represented by a lawyer, he filed the Notice of Appeal *pro se. Id.*

18 On June 8, 2021, the undersigned issued an order noting that the notice of appeal is
19 defective in that it refers to a non-appealable interlocutory order and so this Court is not divested
20 of jurisdiction. Dkt. 26. Further, parties were notified that the case deadlines remain. *Id.* Under
21 that case schedule, Mr. Spice’s opening brief was due June 17, 2021, the responsive brief
22 was due on July 15, 2021 and the reply was due on July 29, 2021. Dkt. 23. That case schedule
23 was set after Mr. Spice’s first motion for extension of time was granted. *Id.*

1 Rather than file an opening brief, Mr. Spice filed a second motion for extension of time,
2 seeking an order resetting the due date for his opening brief to July 16, 2021. Dkt. 27. On June
3 28, 2021, that motion was granted, in part, and denied, in part and he was given a brief extension
4 of time to file his opening brief – to July 6, 2021. Dkt. 31. He did not file an opening brief, but
5 instead filed the pending motion for reconsideration. Dkt. 34.

6 In the motion for reconsideration, Mr. Spice seeks not only reconsideration of the June
7 28, 2021, order granting, in part, and denying, in part, his motion for extension of time to file his
8 opening brief, but now seeks an additional two weeks' time to file his brief (to August 5, 2021),
9 arguing that there have been issues with the transcripts. Dkt. 34. The Appellees were invited to
10 respond pursuant to West. Dist. Wash. Local Rule 7(h), and oppose the motion, noting that the
11 appeal was filed on February 23, 2021, Mr. Spice was to order transcripts by April 5, 2021, but
12 failed to do so until April 28, 2021, well after the deadline. Dkt. 37. The Appellees note that
13 instead of timely filing his opening brief, Mr. Spice has instead filed motions for this Court to
14 recuse and filed a frivolous interlocutory appeal. *Id.*

15 **Standard.** Western District of Washington Civ. R. Pro. 7(h)(1) provides: “[m]otions for
16 reconsideration are disfavored. The court will ordinarily deny such motions in the absence of a
17 showing of manifest error in the prior ruling or a showing of new facts or legal authority which
18 could not have been brought to its attention earlier with reasonable diligence.”

19 **Decision.** The Plaintiff's motion for reconsideration (Dkt. 34) should be denied. The
20 Plaintiff did not show a manifest error in the prior ruling. He did not point to new facts or legal
21 authority which could not have been brought to the Court's attention earlier with reasonable
22 diligence. Delays identified by Mr. Spice are due to his own failure to be diligent. The opening
23 brief was originally due on May 17, 2021. Dkt. 10. Mr. Spice has filed several motions, but still
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1 has not filed his opening brief. This appeal should be decided on the merits. His motion for
2 reconsideration (Dkt. 34) **IS DENIED**. The June 28, 2021, order granting, in part, and denying,
3 in part, his motion for extension of time to file his opening brief (Dkt. 31) **IS AFFIRMED**.

4 As stated above, Mr. Spice did not file an opening brief. As of the date of this order, the
5 brief is six days late. If Mr. Spice fails to file an opening brief by **July 16, 2021**, this appeal may
6 be dismissed without prejudice for failure to prosecute. While the Court appreciates that July 16
7 is the date he originally requested in his second motion for an extension of time, this appeal
8 should be decided on the merits. If Mr. Spice does file an opening brief by **July 16, 2021**, the
9 response, if any should be filed by **August 13, 2021**, and the reply, if any by **August 27, 2021**.

10 **IT IS SO ORDERED.**

11 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
12 to any party appearing *pro se* at said party's last known address.

13 Dated this 12th day of July, 2021.

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16 ROBERT J. BRYAN
17 United States District Judge
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